



***COMMONWEALTH of VIRGINIA***  
**DEPARTMENT OF LABOR AND INDUSTRY**

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**Gary G. Pan**  
COMMISSIONER

August 15, 2022

Michael Rivera  
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U. S. Department of Labor – OSHA  
The Curtis Center, Suite 740  
170 South Independence Mall West  
Philadelphia, PA 19106-3309

SUBJECT: Virginia FY 2021 Comprehensive Federal Annual Monitoring and Evaluation  
(FAME) Report

Dear Mr. Rivera:

Thank you for your letter of August 4, 2022, forwarding Virginia's FY 2021 Comprehensive Federal Annual Monitoring and Evaluation Report (FAME). I am pleased to see that there were no findings and only one observation as a result of the evaluation.

First, during the most trying times dealing with the all too often tragic consequences of the COVID-19 pandemic, please accept our sincere thanks for the valuable services you and your staff provided to the Department and the Commonwealth of Virginia's employees and employers. Your unwavering support of our state plan and your dedication to occupational safety and health have undoubtedly resulted in improved workplace protections in Virginia and in Region III as a whole.

## **IMPACT OF COVID-19**

As with many agencies in state government, but even more so because of its role in working with employers and employees to provide safe and healthy workplaces in the Commonwealth, the Department's VOSH program and its enforcement inspection, voluntary compliance, and cooperative program resources have been taxed to the limit and beyond by the COVID-19 pandemic.

The VOSH program has handled thousands of contacts from employers, employees and the general public, received over 2,268 employee complaints (UPA – Unprogrammed Activity), and received notifications of the hospitalization of 101 employees and the death of 50 employees during the eleven month period from February 1, 2020 through December 6, 2021.

As you know, in response to a petition<sup>1</sup> to the Virginia Safety and Health Codes Board (Board) for consideration of a COVID-19 emergency temporary standard and further direction from Governor Ralph S. Northam,<sup>2</sup> the Board on July 15, 2020,<sup>3</sup> approved the Emergency Temporary Standard for Infectious Disease Prevention of the SARS-CoV-2 virus that Causes COVID-19 (ETS), 16VAC25-220. Virginia was the first state in the country to enact such a standard. The ETS took effect on July 27, 2021 and lapsed on January 26, 2021.

On January 13, 2021, before the ETS expired, the Board adopted a final permanent standard (Virginia Standard), 16VAC25-200, which took effect on January 27, 2021.<sup>4</sup>

On January 15, 2022, Governor Glenn Youngkin issued Executive Order 6<sup>5</sup> directing the Board to meet and determine whether there was a continued need for the Virginia Standard and report to the Governor within 30 days of the issuance of EO 6 on January 15, 2022.

On March 21, 2022, the Board adopted a finding that there was no longer a continued need for the Virginia Standard, 16VAC25-220, based on scientific and medical evidence that the current widespread variants of the virus no longer constituted a grave danger to employees in the workplace under Va. Code §40.1-22(6a). The Board further voted to revoke the Virginia Standard with an effective date of March 23, 2022.

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<sup>1</sup> April 23, 2020 Letter to Commissioner C. Ray Davenport, Virginia Justice Project for Farm and Immigrant Workers Legal Aid Justice Center

<sup>2</sup> <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-63-and-Order-Of-Public-Health-Emergency-Five---Requirement-To-Wear-Face-Covering-While-Inside-Buildings.pdf>

<sup>3</sup> <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/>

<sup>4</sup> <https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>

<sup>5</sup> <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-6-Keep-Virginia-Open-COVID-Workplace-Standards.pdf>

The Virginia Standard was replaced by [VOSH Guidance for Employers to Mitigate the Risk of COVID-19 to Workers](#).

Throughout the pandemic, VOSH worked closely with the Virginia Department of Health (VDH) and other state and local government agencies on the Commonwealth's response to surges as they occurred, work cooperatively with the overwhelming majority of employers who wanted to proactively combat the workplace spread of the virus, and where needed, undertake necessary enforcement action.

It is a testament to the unceasing efforts of Virginia's medical community, its citizens, employees, employers and state and local government agencies that in a study released on March 1, 2022, Virginia had the seventh lowest estimated infection rate among states for its population during the pandemic up to that point.<sup>6</sup>

## **ACCOMPLISHMENTS**

The Virginia Occupational Safety and Health (VOSH) program prides itself on maintaining equally strong enforcement and cooperative program elements; and with the help of your dedicated staff, VOSH has accomplished many important achievements that benefit Virginia's employees and employers:

- Virginia's injury and illness rates are consistently below the national average in both private and public sector employment.<sup>7</sup>
  - An Overall case rate 20.7% below the national average (2.3 versus 2.9)
  - A Private Industry rate 22.2% below the national average (2.1 versus 2.7)
  - A Construction rate 8.0% below the national average (2.3 versus 2.5)
  - A State and Local Government rate 23.1% below the national average (3.0 versus 3.0)
  
- Virginia Unique Standards

Virginia unique standards and regulations<sup>8</sup> provide safety and health protections to employees and employers:

- tree trimming operations
- overhead high voltage line safety
- reverse signal operation in construction and general industry
- fall protection in steel erection

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<sup>6</sup> <https://covid.cdc.gov/covid-data-tracker/#national-lab>

<sup>7</sup> However, the Manufacturing rate was 3.2% above the national average (3.2 versus 3.1).

<sup>8</sup> <https://www.doli.virginia.gov/vosh-programs/virginia-unique/>

- confined space hazards in the telecommunications industry
  - telecommunications, general approach distances
  - construction sanitation
  - field sanitation
  - compliance with manufacturer’s instructions for vehicles, machinery, tools and equipment in general industry, construction, agriculture and public sector maritime
  - VOSH’s abatement verification regulation requires not only abatement certification (i.e., the employer’s signed statement that abatement has occurred), but also requires employers to provide photographs, receipts, purchase orders, etc., as verification that a hazard was abated.
- Additional Funding for Twelve Compliance Safety and Health Officers (CSHO)

The 2021 Virginia General Assembly approved 100% state funding for twelve (12) unfunded VOSH benchmark positions to take effect July 1, 2021 – a dramatic recognition of the importance of maintaining a sustainable enforcement program to compliment the major enhancements in staffing that have occurred in VOSH Cooperative Programs over the last several years.

- VOSH Apprenticeship Program for Compliance Officers

VOSH has implemented an exemplary and one of a kind Apprenticeship Program for VOSH Compliance Safety and Health Officers (CSHO), Industrial Hygienists and Safety and Health Consultants. The Apprenticeship Program has approval through the U. S. Department of Veteran’s Affairs and the Virginia Department of Veteran’s Services as an authorizing agency for benefits under the Montgomery and Webb GI Bills.

- State and Local Government Penalties

[Senate Bill 607](#) was passed by the 2016 Virginia General Assembly and signed into law directing the Virginia Safety and Health Codes Board to adopt regulations for the issuance of proposed penalties to the Commonwealth, its agencies, political subdivisions, or any public body.

The Virginia Safety and Health Codes Board adopted a final regulation on November 30, 2017, [16VAC25-60-260.E](#), providing for VOSH authority to issue penalties to state and local government employers. The regulation took effect on November 1, 2018.<sup>9</sup> The

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<sup>9</sup> <http://townhall.virginia.gov/L/ViewChapter.cfm?chapterid=2347>

regulation allows issuance of penalties to state and local government employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity.”

- Annual Virginia Safety and Health Conference

The Virginia Annual Safety and Health Conference is now entering its 26th successful year of outreach to employees, employers, unions, associations, and government agencies. The 26<sup>th</sup> Annual Conference<sup>10</sup> is scheduled for November 28<sup>th</sup> to December 2<sup>nd</sup>, 2022 in Newport News, VA. The conference hosts hundreds of attendees, vendors, and participants from many outside organizations that give their time and resources to attend and contribute.

- Virginia Voluntary Protection Programs

The Virginia Voluntary Protection Program has been codified and requires the Virginia Safety and Health Codes Board to enact regulations for the operation of VPP in Virginia, Va. Code §40.1-49.13.<sup>11</sup> The VOSH Program adopted an implementing regulation effective December 25, 2017, [16VAC25-200](#).

- Virginia BUILT: A VOSH Strategic Partnership with the Associated Builders and Contractors of Virginia (ABCVA)<sup>12</sup>

In 2020 VOSH established a Strategic Partnership with ABCVA to combine Challenge concepts with the ABCVA’s STEP (Safety Training and Evaluation Process) program to recognize commercial construction contractors that develop and implement exemplary safety and health management systems. The new partnership, known as Virginia BUILT, Virginia BUILT is designed to encourage and recognize ABC-VA members who voluntarily implement highly effective safety and health management systems to benefit construction workers and reduce or eliminate injuries, illnesses and fatalities on construction sites in Virginia.

Virginia BUILT’s unique approach to workplace safety and health incorporates a “mentorship” program as a key component. The Mentorship Tier is the introductory tier of participation in the partnership for those employers actively working with the ABC-VA Virginia BUILT Council (VBC) to improve their safety and health management

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<sup>10</sup> [https://www.doli.virginia.gov/wp-content/uploads/2021/07/Save-the-Date\\_CANVA\\_25-1.pdf](https://www.doli.virginia.gov/wp-content/uploads/2021/07/Save-the-Date_CANVA_25-1.pdf)

<sup>11</sup> <http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4406>

<sup>12</sup> <https://www.doli.virginia.gov/virginia-built-program/>

systems to meet VOSH requirements, with the goal of becoming a Tier One participant. Safety and health experts from Tier Two and Tier Three participants serve as the mentors.

Another essential component of Virginia BUILT is the incorporation of the ABC STEP program (Safety Training Evaluation Process) as the gateway to participation in Virginia BUILT. Founded in 1989 as a safety benchmarking and improvement tool, STEP has evolved into a world-class safety management system that dramatically improves safety performance among participants regardless of company size or type of work. Participating ABC member firms measure their safety processes and policies on 24 key components resulting in recognition through progressive levels of achievement (Bronze, Silver, Gold, Platinum, and Diamond).

Virginia BUILT currently has two Tier II participants.

- Virginia BEST<sup>13</sup>

The VOSH program signed a strategic partnership with the Associated General Contractors of Virginia (AGCVA) on October 13, 2016 to establish a recognition program entitled “Virginia BEST” (Building Excellence in Safety, Health and Training) based on OSHA Challenge concepts.

Virginia BEST is designed to improve best practices, compliance efforts and accident prevention on construction worksites through recognizing the outstanding efforts of exemplary employers. The program works with highly successful employers who have demonstrated continual improvement in occupational safety and health and who are willing to share resources, best practices and advise the construction industry at large.

Virginia BEST currently has eight Level One participants and two Level Two participants.

- Virginia VPP Strategic Partnership with Virginia Department of Corrections<sup>14</sup>

The Department of Labor and Industry and the Virginia Department of Corrections (VADOC) signed a strategic partnership on August 16, 2018, incorporating Challenge concepts to work with the VADOC to bring additional correctional facilities/operations

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<sup>13</sup> <https://www.doli.virginia.gov/voluntary-protection-program/virginia-best-outreach-docs/virginia-best-program/>

<sup>14</sup> <https://www.doli.virginia.gov/voluntary-protection-program/vadoc-challenge/>

into VPP (two facilities have already achieved STAR status, Augusta and Lunenburg Correctional Facilities – the only two correctional facilities in VPP nationwide). VADOC Challenge is designed to encourage and recognize correctional facilities that voluntarily implement highly effective safety and health management systems to benefit Corrections’ workers and reduce or eliminate injuries, illnesses and fatalities at VADOC sites in Virginia.

Three stages of participation in VADOC Challenge are provided:

Stage I	Assess, Learn and Develop
Stage II	Implement, Track, and Control
Stage III	Reassess, Monitor, and Improve

At Stage III, the VADOC site’s safety and health management system has been fully implemented and the site is ready to submit an application for Virginia STAR certification.

Eight correctional facilities have begun the evaluation and application process.<sup>15</sup>

▪ Virginia Challenge Established as a Path to Virginia STAR<sup>16</sup>

The Virginia Challenge was established on June 15, 2018 to create a structured path to Virginia STAR.

The Virginia Challenge Program provides a “roadmap to Virginia STAR,” and a three stage process, based on OSHA Challenge concepts, which plots a path for employers to follow to Virginia STAR certification. Virginia Challenge uses the assistance of a voluntary network of safety and health professionals (OSHA Special Government Employees (SGE) and Virginia Private Industry Volunteers (PIV)) committed to providing guidance and advice to participants in developing and implementing a safety and health management system based on VOSH’s VPP model.

Since its inception in June, 2018, 20 sites have applied, with ten sites having completed Stage 1 and one site have completed Stage two and four sites have completed Stage 3.

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<sup>15</sup> <https://www.doli.virginia.gov/vadoc-challenge-program-participants/>

<sup>16</sup> <https://www.doli.virginia.gov/voluntary-protection-program/challenge/>

- New Virginia STAR Sites<sup>17</sup>

Virginia VPP welcomed two new Virginia STAR sites during FY 2021 at Sunoco – Virginia Beach Terminal and Printpack Williamsburg. Virginia STAR currently has 37 participants with thousands of employees.<sup>18</sup>

Virginia STAR is the highest level of recognition awarded by the Department to employers that have implemented exceptional safety and health management systems that meet a rigorous set of occupational safety and health criteria. Virginia STAR fosters a cooperative relationship between the VOSH program, the employer, and employees to assure the highest level of safety and health protections for workers.

There are four elements to an effective SHMS:

1. Management Leadership and Employee Involvement,
2. Worksite Analysis,
3. Hazard Prevention and Control, and
4. Safety and Health Training

Virginia STAR sites often achieve injury and illness rates 50% or more below the national average for their respective industries, and improve employee morale and productivity while developing risk management approaches that reduce or eliminate:

- Workers' compensation and increased insurance costs
- Damage to products, materials, machinery, equipment, property and other assets
- Business interruption, including Police, EMT, Fire, VOSH and Department of Environmental Quality (DEQ) presence
- Replacing/retraining employees
- Liabilities to Third Parties

- Outreach

Public service announcement (PSA) videos<sup>19</sup> have been developed on a number of safety and health topics, including the areas of tree trimming operations, overhead high voltage line safety, trenching safety, the dangers of heat stress and fall protection.

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<sup>17</sup> <https://www.doli.virginia.gov/voluntary-protection-program/star/>

<sup>18</sup> <https://www.doli.virginia.gov/voluntary-protection-program/vpp-star-worksite-companies/>

<sup>19</sup> <https://www.youtube.com/user/DOLIVirginia/videos>



In closing, although we have many challenges in Virginia, it is our sincere belief that we do an effective and highly efficient job in trying to assure that all Virginia workers have the chance to return home at the end of their shift in the same condition that they started their work day.

Thank you again for this opportunity to provide our response to the Virginia's 2021 FFY Comprehensive FAME report. We look forward to an ongoing cooperative and mutually supportive relationship with Region III. Please accept our sincere thanks for the valuable services you have provided to the Commonwealth of Virginia's employees and employers.

Sincerely,

Gary G. Pan  
Commissioner

c: Deputy Commissioner Harold Pyon  
Deputy Commissioner Willis Morris  
Assistant Commissioner Bill Burge  
VOSH Directors